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## THE BUREAU OF INDIAN AFFAIRS

Theodore W. Taylor

Foreword by Phillip Martin

1984

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1982	
Reagan Budget	
492	
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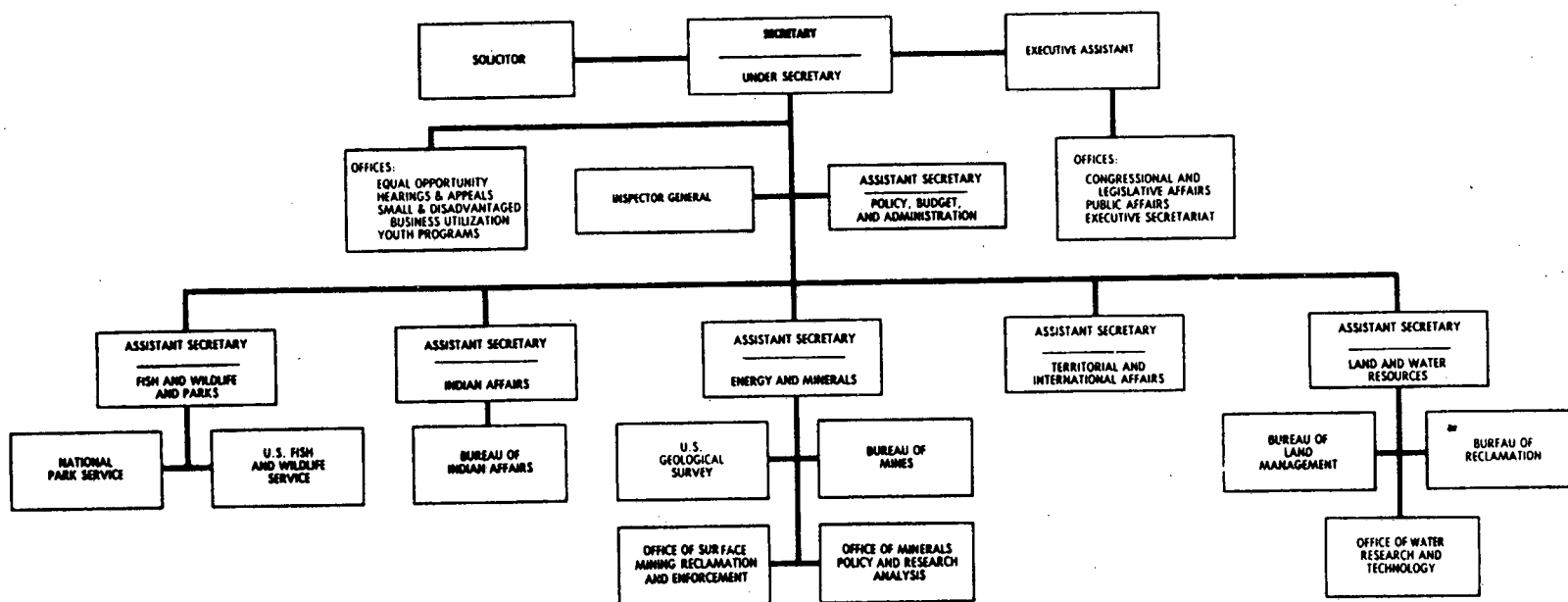


Figure 3.1. Department of the Interior organization chart. (Source: *The United States Government Manual 1981/1982*, Office of the Federal Register, National Archives and Records Service, General Services Administration [Washington, D.C.: Government Printing Office, May 1, 1981], p. 832.)

# CHALLENGE

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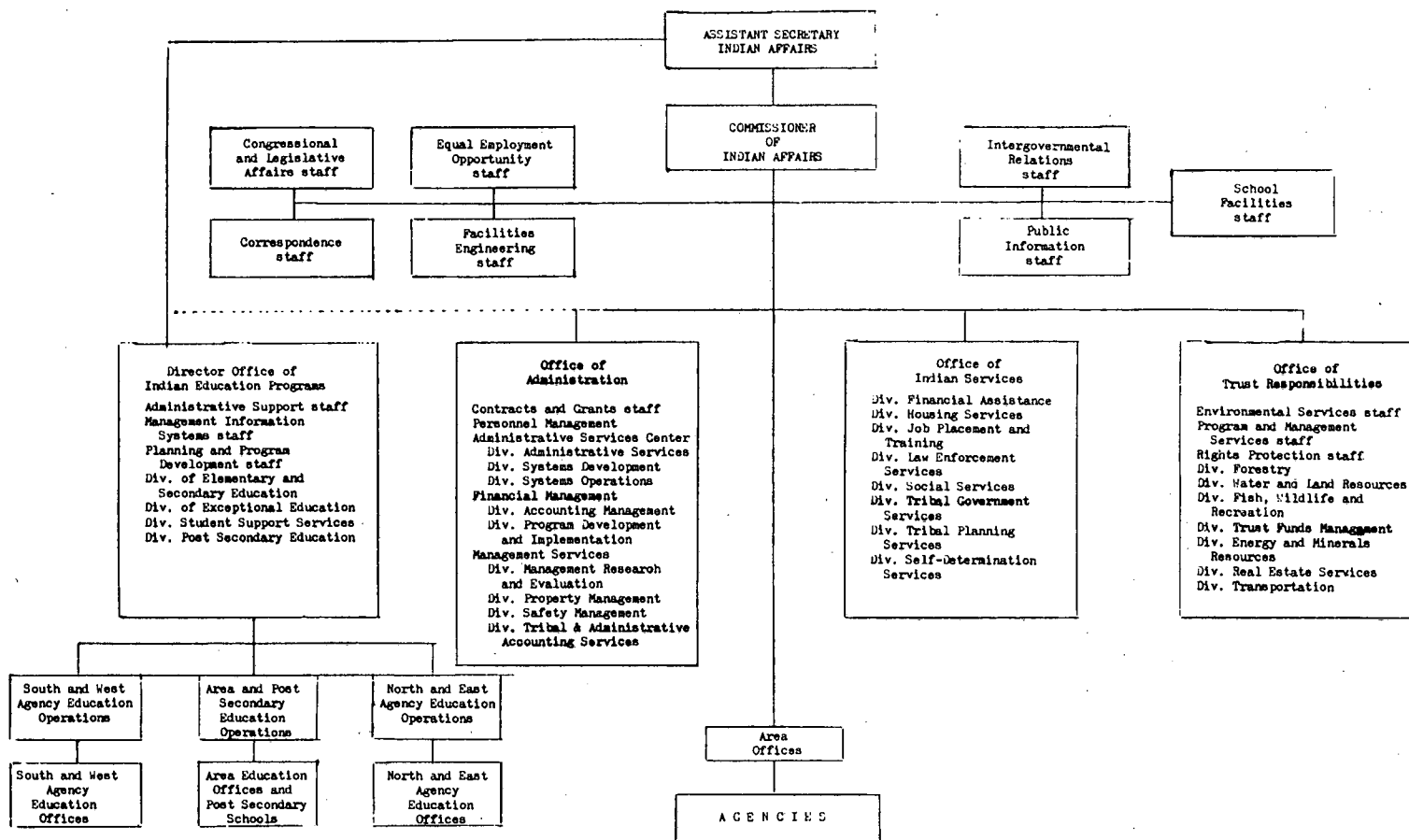


Figure 3.2. Bureau of Indian Affairs organization chart. In 1983 no commissioner had been appointed, and the commissioner's function was being performed by a deputy assistant secretary. (Source: Based on chart approved March 15, 1982, U.S. Department of Interior, *Departmental Manual*, chap. 130, p. 2.)

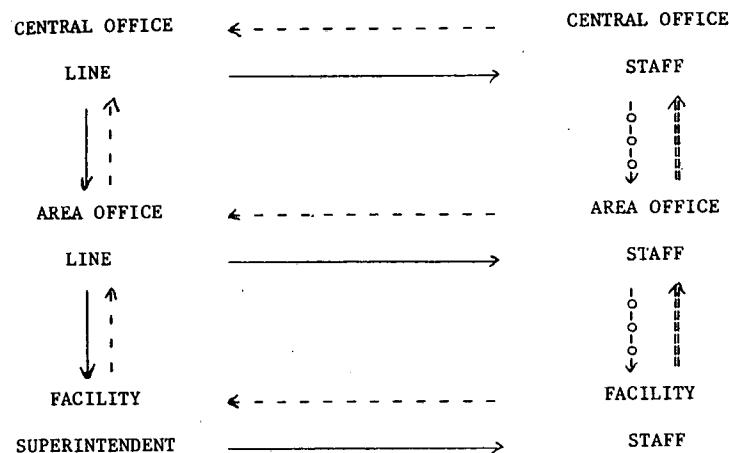
The commissioner is assisted by staff offices: Congressional and Legislative Affairs, Correspondence, Equal Employment Opportunity, Intergovernmental Relations, Public Information, School Facilities, and Facilities Engineering. The functional staff offices under the commissioner of Indian affairs in the headquarters office are Indian Services, Trust Responsibilities, and Administration. The director of the Office of Indian Education Programs in Washington, D.C., reports to the assistant secretary's office but receives its personnel, budget, contracting, procurement, management services, facilities construction, and maintenance from the bureau.

Area and agency offices, to some degree, replicate the functional activities at the national level. That is, if there are commercial forests under the jurisdiction of an agency, there will be forestry personnel on the agency staff. If an agency's forestry responsibility is so small that it would not be cost effective to assign a forester to the agency staff, a forester from another agency or the area office might provide the necessary service. Irrigation personnel are assigned only where there are irrigation projects, and so on.

Since 1949 all functions in an area have been under the line authority of the area director and under the line authority of the agency superintendent at the agency level. Education was removed from area and agency direction in 1978. Technical guidance and assistance are provided through functional experts—e.g., forestry personnel at BIA headquarters advise area forestry personnel, and area forestry personnel advise agency foresters. If a conflict occurs between an area forester and an agency superintendent—i.e., the latter disagrees with the technical direction from the area forester to the agency's forester—the area director steps in and settles the matter. Likewise, if technical direction from a Washington professional staff member to a functional staff at the area level did not meet with the area director's approval, the commissioner (or at present, the deputy assistant secretary for operations) would have to resolve the issue. Figure 3.3 illustrates these line and guidance relationships.

### Program Functions

When I joined the BIA in 1950 it was a government in miniature as it fulfilled for Indians most of the functions normally handled by local, county, state and federal governments for other citizens. Responsibilities of the BIA regarding Indians included education; health; social services; land management; forestry; soil conservation; regulation of grazing; irrigation; electric power; tribal government support; law and order; loans; business, agricultural, and industrial development;



#### LEGEND:

- LINE RESPONSIBILITY: Supervision, Orders, Directions, Suggestions, Information, Consultation.
- - - SUBORDINATE LINE OFFICE AND STAFF OFFICE RESPONSIBILITY TO A LINE OFFICE: Operational and Policy Recommendation, Consultation, Reports, Information.
- STAFF RESPONSIBILITY TO OTHER STAFF GROUPS:
  - o-o- Down: Technical Guidance, Consultation, Information.
  - ===== Up: Information, Requests for Technical Assistance, Suggestions, Consultation.

Figure 3.3. Chart illustrating relationships, Bureau of Indian Affairs. (Source: Theodore W. Taylor, "The Regional Organization of the Bureau of Indian Affairs" [Ph.D. dissertation, Harvard University, December 1959], p. 220)

tourism; employment and relocation; construction, operation, and maintenance of necessary facilities such as hospitals, schools, irrigation works, and roads; management of trust responsibilities for Indian land and Indian funds in the U.S. Treasury; and many more functions.

Today the Indian Health Service is in the Department of Health and Human Services (HHS), and agricultural extension services are performed by the Department of Agriculture (USDA), although they are funded by BIA appropriations. In addition, many expanded services for Indians have developed in other government departments. For those

### Office of Indian Services

*Division of Tribal Government Services.* Aid to tribal governments involves giving funds and expert assistance to tribes to improve their governmental operations, to modify governing documents, to conduct elections, to prepare membership roles, to review and approve tribal attorney contracts, and to perform necessary operations in carrying out judgment awards—such as processing detailed plans for the utilization of judgment funds and preparing descendancy rolls of judgment award beneficiaries and handling enrollment appeals. These functions are concerned with those activities in which the tribal government is acting as a government per se rather than when it is functioning as the manager of service programs for its members; the self-determination program provides assistance to improve managerial capacity. This is a difficult distinction to understand, and the 1982 budget justification furnished the following example: the Division of Tribal Government Services might work with a tribe in drafting an amendment to the tribe's constitution to permit tribal contracting and then assist, if necessary, in the process of tribal adoption of the amendment. Funding appropriated to the division of Self-Determination Services could then be used by the tribe to acquire the necessary expertise or training to successfully operate a contract.

The Division of Tribal Government Services also does the research on and the processing of petitions for federal acknowledgment of Indian groups not currently recognized by the bureau. Four such groups were recognized in 1981—the Paiute, Grand Traverse, Tunica-Biloxi, and Jamestown Clallam.

Funds have been provided by the BIA to the Department of Agriculture for 4-H and home extension services and the operational direction of the Youth Adult Conservation Corps (YACC) and Youth Conservation Corps (YCC) camps located on Indian reservations. Under the Maine Indian Claims Settlement Act the provision of Indian services to certain Maine Indians is a part of the function of the Division of Tribal Government Services.

The Judicial Services Branch is engaged in improving the judicial capacities of Indian tribes. In 1982 this branch provided technical assistance to 108 tribal courts and 28 courts of Indian offenses (Code of Federal Regulations [CFR] Courts) operated on reservations (see Chapter 4, section on "Tribal Courts," for further discussion). Assistance is provided for the technical aspects of establishing and maintaining Indian courts and for helping them achieve due process and equal protection for the individuals appearing before them. This assistance includes reviewing tribal ordinances and helping tribes upgrade law

Table 3.4  
Social Services Cases and Costs for 1982 (\$ in Thousands)

	Cases per Month or Year	1982 Estimates
General Assistance	57,750 per month	\$ 54,863
(TWEF)	(4,300) per month	(2,838)
Child Welfare Assistance	3,500 per month	13,000
Miscellaneous Assistance	1,325 per year	1,137
Indian Child Welfare Act Grants	-----	10,000
		79,000

Source: Bureau of Indian Affairs, "Budget Justification for FY 1982" (January 1981).

and order codes. Tribal court cases were expected to increase from 132,000 in 1982 to 141,000 in 1983.

*Division of Social Services.* Welfare assistance grants are provided to tribal members living on or near reservations only if the recipient establishes need and cannot obtain assistance from state or local public welfare agencies. State assistance standards are used in determining the amount of the grants.

There are four types of grants or contracts—the number of people and costs involved are indicated in Table 3.4.

1. *General Assistance:* consists of (a) direct financial assistance for living expenses to families and individuals whose income is below state standards, (b) nonmedical institutional or custodial care for incapacitated adults, and (c) contracts with tribes to operate a Tribal Work Experience Program (TWEF). That innovative program replaces welfare with work experience, and those Indians who work on tribal projects receive \$45 per month over their welfare entitlement.

2. *Child Welfare Assistance:* provides for care of abandoned, neglected, or handicapped children through foster homes, small group care, or institutions.

3. *Miscellaneous Assistance:* pays for burial expenses for the indigent without families or those whose survivors cannot afford funeral expenses. This fund also helps tribes with storage and distribution costs of federally provided food and with disaster emergencies.

4. *Indian Child Welfare Act Grants:* grants funds to tribes and Indian organizations to operate Indian child and family services programs such as licensing or regulating Indian foster and adoptive homes and providing facilities for counseling and temporary custody of Indian children,

### *Office of Trust Responsibilities*

**Real Estate and Rights Protection.** The core legal responsibility of the secretary of the Interior, exercised through the BIA, is that of acting as trustee for Indian land. Thus, all aspects of title, land ownership, land acquisition, disposal, land use, and resources connected with the land (water, minerals, range, forest) are involved in this trust responsibility. As indicated earlier, education may be the most important program leading to Indian individual and tribal group self-sufficiency, but the basic trust responsibility is with the Indian land base. Any inadequate exercise of this trust responsibility for tribal land subjects the government to suit for damages.

Examples of inadequate performance are excessive grazing on trust land, which endangers the land's productivity; inefficient land title services; and the almost impossible fragmentation of land ownership of individually owned trust land. BIA staff members are not necessarily culpable for these deficiencies—Indian tribes, pressure groups, and Congress bear equal shares of responsibility—but the secretary of Interior is legally responsible, and the Treasury must pay any award resulting from legal suits on these matters. The approximately 52 million acres of Indian trust land constitute a multibillion-dollar estate for which the secretary of Interior is legally responsible as long as the land is held in trust by the federal government for the Indian owners.<sup>14</sup>

The Division of Real Estate Services has historically been short of funds. This area is not glamorous like soil conservation, education, or vocational training, and the division has always had huge backlogs of work. Real estate services are provided through the eighty-five agency and field offices, the twelve area offices, and the central office. In addition to BIA statutes, real estate services must be responsive to federal statutes such as the National Environmental Policy Act, the Historic Preservation Act, the Archaeological Antiquities Act, and the Archaeological Resources Protection Act.

Major activities of realty personnel in the agencies and area offices include surface and subsurface leasing and modifications, rights-of-way grants and permits, land acquisition, land disposal, partitions and exchanges of interest in lands, the operation and maintenance of a systematic land-title ownership records system, lease and land contract compliance monitoring, appraisal of land and land evaluation services, land use planning, boundary surveys, land management counseling services, land resource inventory evaluation, and condemnation actions. The aim of these interrelated activities is to provide landowners with the essential data and assistance for the management and development of their energy, mineral, and land resources.

Leases supervised by realty personnel yielded over \$198 million in 1979, including farm, business, oil and gas, and other mineral leases. In addition, landowners increase their land values through the land improvement and conservation stipulations in the lease documents. Technical advice to tribes and realty personnel from mineral, farm, forestry, and other specialists is utilized in making decisions and drawing up the provisions of lease documents.

The so-called heirship problem is dramatically illustrated in the following.

Land ownership record keeping becomes more complicated each day because of the heirship problem and segregated surface and sub-surface ownership. There are over 200,000 surface tracts of individually owned trust land with an average tract ownership of 10 undivided interest owners. This means there are over 2,000,000 separate undivided interests to keep track of. Ownership in some tracts is so complicated that owners own an undivided interest in which the common denominator is in the quintillionths. If such tracts were leased, some undivided-interest owners would receive a fraction of a penny. This kind of ownership either makes it impossible to develop such tracts or severely restricts the development since all owners have to be contacted.<sup>15</sup>

Boundary surveys, called cadastral surveys, are performed by the Bureau of Land Management for the BIA. Recent funding budgeted by the BIA has resulted in approximately 700 miles of such surveys annually. Surveys are done on a priority basis, and those concerned with energy-related mineral development receive emphasis at present.

The Maine Indian Claims Settlement Act provided for the acquisition of 300,000 acres of land, and realty personnel will purchase the land selected by the tribe, provide records of title, and carry out other required realty services. Also, the issuance of trust patents to Alaska Native applicants as a result of recent legislation will require real estate services.

Other Office of Trust Responsibilities functions are related to environmental quality and the protection of Indian rights. The National Environmental Policy Act (NEPA) requires that all proposed major federal actions that may significantly affect the quality of the human environment be preceded by an environmental impact statement. The BIA carries out the intent of NEPA and other acts concerning the environment by examining proposed actions on Indian lands for their impact, such as the effects of mining and oil and gas exploration. When a significant impact is apparent, an environmental impact statement (EIS) is prepared so that the Indian people and the trustee (secretary of the Interior) are aware of the effects before proceeding. Funds have been transferred to the National Park Service for provision of archae-

ological clearance services prior to a contemplated land use, but the BIA was expected to perform these clearances beginning in 1983.

The Indian rights protection activity concerns those rights guaranteed Indian tribes through treaty, statute, or executive order and those actions required of a prudent trustee of Indian land. Since Indians are U.S. citizens, their rights as citizens are also involved. Citizenship, of course, involves responsibilities as well as rights, but there is not much emphasis on this aspect in BIA literature or functional statements. The emphasis in the organization manual, budget justification documents, speeches, and literature is on the responsibilities of the Congress and the government in general to Indians.

Significant areas involving important Indian rights are water rights, which are largely unquantified and for which there are many claimants, and hunting and fishing rights. "The majority of the tribes are not financially able to undertake the programs necessary to protect their rights and resources."<sup>16</sup>

**Financial Trust Services.** This BIA activity provides for the accounting for and the disbursing of tribal and individual Indian moneys deriving from the sale or lease of tribal resources such as land, timber, minerals, and water; the disbursing of per capita payments, judgments, awards, and claims; the preparation of trust fund histories, research projects involving special fiscal problems, special financial reports for use in litigation cases, trust fund data for legislative acts, and recommendations for the execution of the acts; investing the various revenues so as to maximize returns while still protecting the security of the funds; and, through an automated accounting system, monthly reports for the appropriate tribe and individual. As of September 30, 1980, there were \$1,153 million invested with annual earnings of \$121.4 million. Services were provided for 225 tribes and 230,000 individual accounts.

Personnel authorized to collect and disburse funds for land and property held in trust are stationed at most Indian agencies.

#### *Facilities Management*

The facilities engineering staff and the school facilities staff are located in Albuquerque, New Mexico. The facilities engineering staff provides architectural, engineering, construction management, contract, facilities management, and other technical services related to the construction of new facilities. This staff also coordinates any major rehabilitation, alterations, improvement, and maintenance of existing buildings, utilities, grounds, and other facilities. Design, construction, and technical assistance is also provided to Indians and Alaska Natives.

The BIA spent about \$400 million in facility improvement and repair costs and about \$160 million in replacement costs in 1982. Small

amounts for new school construction were included in the original 1982 budget, as well as three noneducational structures.

The school facilities staff provides advice on the planning, design, construction, equipping, and evaluation of BIA, public, and tribally operated school facilities. The objective is to have building layout and equipment meet educational needs in the most effective way. The facilities engineering staff utilizes this information in the design and construction of school facilities, as do the tribes and—it is to be hoped—the states when they build schools primarily for Indians with federal funds.

#### *Office of Administration*

The Office of Administration is responsible for providing staff support to the commissioner and administrative support services to the director of Indian Education Programs. The following functions are involved: system development, automatic data processing, budget preparation, energy conservation, finance and accounting, management research and evaluation, personnel management, procurement, property management, contracting, program development and implementation, and safety management. The Administrative Services Center in Albuquerque, New Mexico, provides centralized information systems planning and development, automatic data processing (ADP) operations and support for the bureau, fiscal accounting, a centralized payroll, and automated personnel records systems.

The program development and budget function is in many ways similar to the budget and program evaluation offices of other agencies, but there are some additional complexities because of the need to meld tribal priorities and tribal comprehensive plans into the bureau's program development and budget requests. The contracting function includes negotiations with the tribes, as a result of the self-determination act, to help them perform functions formerly carried out by the BIA.

In an agency the size of the BIA the administrative workload is heavy; Table 3.7 gives some indication of the magnitude.

#### **Other Interior Bureaus**

Although the BIA is the central organization for Indian affairs in the Department of the Interior, other Interior bureaus are also involved. Indian-related activities carried out by these bureaus are funded in two ways: reimbursement, primarily by the BIA or a tribe, or directly from each bureau's own appropriation. Table 3.8 presents a summary of Indian services by these other U.S. Department of Interior bureaus and offices for fiscal year 1981.

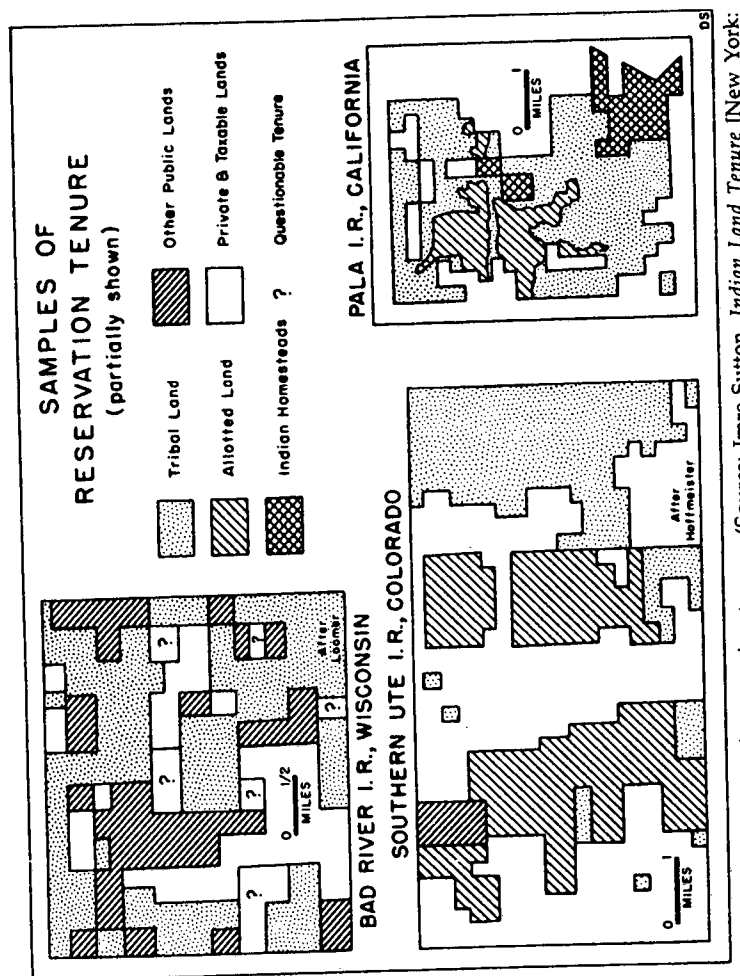


Figure 4.1. Samples of reservation tenure. (Source: Inre Sutton, *Indian Land Tenure* [New York: Clearwater Publishing Co., 1975], Figure 5, p. 85, reprinted by permission.)

who preferred cash to land, and many sales have been to non-Indians. For example, the Port Madison Reservation of the Suquamish tribe in the state of Washington has a land area of 7,276 acres, but only 37 percent of it has been retained by fifty Indians. The rest of the land within the exterior boundaries of the original reservation is owned by 3,000 non-Indians who live within the boundaries.<sup>5</sup> That portion of the Navajo Reservation that lies in Arizona and Utah is almost entirely tribal trust land, while much of the reservation in New Mexico is checkerboarded with non-Indian holdings. The major existing reservations are shown in Figure 1.4, and the land ownership patterns shown in Figure 4.1 indicate the situation on many reservations.

As is obvious from the movement of Indians to all geographical parts of the United States there is no requirement that Indians must stay on a reservation. They are as free to move about as any other citizens of the state wherein they reside, and they may also move as freely as other citizens throughout the United States.

### Tribal Government Structures and Authorities

Of the 499 federally recognized Indian entities, 280 have written constitutions or organic documents. Only 4 of the 19 Pueblo groups (small tribes primarily in the Rio Grande Valley of New Mexico) have written documents; the other 15 have traditional governments. Tribal governments have authority over tribal members, other Indian residents, and for some types of civil cases, non-Indians. The area of tribal government jurisdiction is generally the land that lies within the exterior boundary of a reservation.

There are a variety of tribal government structures at present. Most of the larger groups have governments patterned on guidelines furnished by the BIA after 1934, particularly those tribes whose traditional governing apparatus was no longer pertinent (e.g., small bands) or whose aboriginal forms had been stamped out or atrophied as the result of the takeover of government functions after 1870 by the Indian agent and his staff. Current constitutions and bylaws are based on non-Indian ideas rather than on Indian tradition, which, in some cases in which several tribes or groups were thrown together, might not have been particularly pertinent in any event.

In addition to all the powers vested in any Indian tribe or tribal council by existing law, Section 16 of the Indian Reorganization Act (IRA) provided that constitutions and bylaws would vest the tribes with the authority to employ legal counsel; prevent the sale or encumbrance of tribal land or other assets without the consent of the tribes; and negotiate with federal, state, and local governments. Other provisions

frequently found in constitutions give tribal governments the authority to determine tribal membership; assign tribal land to individuals; manage economic affairs; appropriate money for salaries or other public purposes; levy taxes, license fees, or community labor in lieu thereof; control the conduct of members of the reservation by enactment of ordinances, employment of police, and operation of a court system; regulate the conduct of trade; establish rules for domestic relations; and enact ordinances for the general welfare.

Corporate charters under the IRA establish authority for tribal economic activity through corporations with perpetual succession. These charters generally provide that supervision over powers exercised under the charter may be terminated upon request by the tribe and approval of the secretary of the Interior. For example, the tribal charter of the Saginaw Chippewa Indians of lower Michigan provided that

transactions involving land leases or timber sales, certificates of interest in corporate property, the borrowing of money, the making of contracts calling for money payments, and other actions required approval of the Secretary of the Interior during an interim period of 5 years. Thereafter, the tribe could request the Secretary to relinquish his control over any or all of the actions, the Secretary having authority to grant and request or require the tribe to vote on the question.<sup>6</sup>

The Saginaw Tribal Council made such a request in the form of a resolution, and the secretary notified the council on July 18, 1949, that he saw "no reason why this Department should continue to exercise supervision" over the items in question. However, transfer of complete responsibility, including that for tribal trust land, requires legislation. The assumption of responsibility by tribes under corporate procedures has been limited (only three tribes had done so up to 1970) as most tribes have not sought to carry on business under their charters.<sup>7</sup>

Although the IRA did not require it, the secretary of Interior has continued to review and approve tribal actions under the provisions of the constitutions which were adopted by the tribes and approved by the secretary.<sup>8</sup> This policy in part may be a carry-over from the practice prior to 1934 when many tribes had constitutions subject to the approval of the secretary of Interior and based on his general supervisory powers. The tribes are now encouraged by the BIA to remove the secretarial review and approval provisions except where required by law. The earlier constitutions were "very simple in style and subject matter" according to William Zimmerman,<sup>9</sup> but after 1934 the constitutions were different. They were drafted for the most part by Interior lawyers, who worked closely with the tribes, and aimed at specifying in detail the operation of a tribal government.

In January 1982, in various parts of the Supreme Court's opinion in a tribal taxing authority case in which the Court held that the Jicarilla Apache tribe could impose an oil and gas severance tax on non-Indian lessees of tribal land, the Court emphasized that the secretary of Interior had approved the constitution of the Jicarilla tribe pursuant to the IRA and that he had approved the tribal severance tax ordinance in question. The Court stated that this approval authority is a constraint on tribal power and helps minimize concern over possible unfair use of such power or actions that would be inconsistent with national policies. Another constraint is the plenary power of Congress to limit tribal powers.<sup>10</sup> This view of the Court raises questions about the current attitude of the Interior Department and committee staffs on Capitol Hill that the secretary of Interior has no authority or responsibility over tribal constitutions after adoption or responsibility for approving tribal ordinances.

Today tribal organizations fall into three categories: (1) officially approved Indian organizations pursuant to federal statutory authority—224 groups (lower 48 states: IRA 132 and Oklahoma Indian Welfare Act 22; Alaska: Alaska Native Act 70, of which 53 are also incorporated under state law); (2) officially approved Indian organizations outside of specific federal statutory authority—56 (lower 48 states: 55; Alaska: 1); and (3) traditional Indian organizations recognized without formal federal approval of organizational structure—219 (lower 48 states: 71; Alaska: 148, of which 73 villages are also incorporated under state law). Combining the above three categories results in a total of 499 Indian entities eligible for BIA services. In the lower 48 states and Alaska, a total of 280 Indian entities have formally approved organic documents as defined in categories one and two above.<sup>11</sup>

The Navajo, the largest tribe in the United States, rejected the IRA and cannot now adopt a constitution under its provisions. This tribe is classified in category two above and has no written constitution as such. The Navajo pass ordinances and resolutions, and the present three volumes of such enactments constitute their governing documents. The evolving governing structure contains elements of traditional Navajo society modeled on the federal authority structure. "From a family centered, locally oriented, loosely structured, non-authoritarian society, a collectivistic, tribe-centered, authoritarian nationalistic modern state is being created."<sup>12</sup> According to Mary Shepardson the traditional system slows up the rate of change, but the Navajo Tribal Council has achieved a consensus of modernists and traditionalists that will result in the institutionalization of the new system.<sup>13</sup>

Four groups are involved in the present Navajo government: the tribal lawyer, elected officers, elected delegates, and hired personnel.

Although Shepardson wrote in 1963, her description of the job of the tribe's chairman is still generally accurate. The chairman must speak Navajo and English; he must be at ease at a sing, in a hogan, in a modern U.S. home, and on television. He is expected to have business and organizational ability, be able to deal effectively with federal and state officials, work out arrangements with corporations (especially coal and oil companies), and obtain concessions from the non-Indian society. If he moves too fast the traditionalists will be upset; if he modernizes too slowly the aggressive younger group will be disappointed. "His election base is the whole Reservation; his field of activity is the whole country," Shepardson continues: "Population increase and new, complicated economic problems cannot be handled with the old informal structures; the new system is needed because it is geared to new problems."<sup>14</sup> One of the strengths of the Navajo is their ability to adapt and at the same time retain much of their tradition and a feeling of being Navajo. Thus, they change without losing their identity.

### Law and Order—The Judicial System

Several recent court decisions have shaken both Indians and non-Indians. The so-called Boldt decision on fishing rights stunned the Pacific Northwest non-Indian community by allotting 50 percent of the fish catch to the Indians.<sup>15</sup> The Oliphant decision jolted the recently developing concept of tribal government criminal jurisdiction over non-Indians by limiting tribal jurisdiction to Indians.<sup>16</sup>

From early times until around 1870 the general policy was to attempt to have tribes manage their own internal affairs, including law and order. "Traditional methods of trial and punishment included restitution, community scorn, banishment, and death."<sup>17</sup> The sovereignty of tribes over major offenses committed by Indians in Indian country was greatly modified by the Major Crimes Act of 1885 (23 Stat. 362, 385), which placed such offenses under federal rather than state or tribal jurisdiction. The seven original major crimes of murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny have been added to from time to time, and the current list is now found in 18 USC 1153. These offenses by Indians in Indian country are prosecuted by federal district attorneys in federal courts.

As the BIA became involved in the administration of tribal affairs it had to face the problems of trial and punishment, as well as of policing for law and order. In 1884 courts were established for Indian offenses, and these still operate for twenty-nine tribes or groupings; the current regulations continue the provision that the jurisdiction of these courts is limited to Indians.<sup>18</sup> The purpose of the regulations is to

provide machinery for law enforcement where there is no adequate tribal law or custom or for which "no adequate substitute has been provided under Federal or State law."<sup>19</sup> The regulations do not apply where state laws are operative, and for tribes that have a constitution, the regulations apply only until a law and order code has been adopted by the tribe and approved by the secretary of Interior.

### *Investigation, Arrest, and Prosecution*

Two aspects of the law and order system are (1) policing, arrest, and prosecution and (2) the trial of and assessment of penalties for offenders.

The U.S. Commission on Civil Rights reported the following testimony of Michael Hawkins, the U.S. district attorney for Arizona.

The single most dramatic thing . . . I saw [upon taking office as a U.S. attorney] was significant duplication and overlap of the law enforcement services being offered either by tribal police agencies, the Bureau of Indian Affairs Law Enforcement Services, and the FBI. I found instances, for example, where three separate reports were being prepared by three separate agencies, witnesses being interviewed three and four times by different agencies—no sense, no standards, no guidelines as to the referral of those reports, nothing beyond informal understandings between individuals about investigative jurisdictions between the agencies. I felt a compelling need, at least on my part, to deal with that situation.<sup>20</sup>

The district attorney continued:

Beyond the cost to taxpayers of such duplication of responsibility, this overlap posed significant practical problems for federal law enforcement. Witnesses to crimes were often interviewed by two or three separate agencies, sometimes producing such inherently conflicting statements that subsequent criminal prosecutions were rendered enormously difficult, if not impossible.

Therefore, the district attorney worked out guidelines for the Navajo in cooperation with the tribe, the BIA, and the FBI, and these guidelines were expanded to other Indian groups in the state. The result has been the elimination of overlap, and only single investigations are carried out.

The House Committee on the Judiciary noted this situation in hearings on the authorization bill for the Department of Justice appropriation for FY 1982 and heard testimony from former District Attorney Michael Hawkins as well as from the Civil Rights Commission and the FBI. It was obvious that the FBI cannot be readily available to all places on all Indian reservations. In 1980 the FBI estimated it spent the equivalent of thirty-five full-time agents' time to police 50 million acres,